

FIRST REGULAR SESSION

SENATE BILL NO. 345

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR VOGEL.

Read 1st time February 14, 2005, and ordered printed.

TERRY L. SPIELER, Secretary.

1546S.011

AN ACT

To repeal section 288.110, RSMo, and to enact in lieu thereof one new section relating to the transfer of employer accounts, with an effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 288.110, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 288.110, to read as follows:

288.110. **1.** Any individual, type of organization or employing unit which has acquired substantially all of the business of an employer, excepting in any such case any assets retained by such employer incident to the liquidation of [his] **the employer's** obligations, and in respect to which the division finds that immediately after such change such business of the predecessor employer is continued without interruption solely by the successor, shall stand in the position of such predecessor employer in all respects, including the predecessor's separate account, actual contribution and benefit experience, annual payrolls, and liability for current or delinquent contributions, interest and penalties. If two or more individuals, organizations, or employing units acquired at approximately the same time substantially all of the business of an employer (excepting in any such case any assets retained by such employer incident to the liquidation of his obligations) and in respect to which the division finds that immediately after such change all portions of such business of the predecessor are continued without interruption solely by such successors, each such individual, organization, or employing unit shall stand in the position of such predecessor with respect to the proportionate share of the predecessor's separate account, actual contribution and

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

benefit experience and annual payroll as determined by the portion of the predecessor's taxable payroll applicable to the portion of the business acquired, and each such individual, organization or employing unit shall be liable for current or delinquent contributions, interest and penalties of the predecessor in the same relative proportion. Further, any successor under this section which was not an employer at the time the acquisition occurred shall pay contributions for the balance of the current rate year at the same contribution rate as the contribution rate of the predecessor whether such rate is more or less than two and seven-tenths percent, provided there was only one predecessor or there were only predecessors with identical rates. If the predecessors' rates were not identical, the division shall calculate a rate as of the date of acquisition applicable to the successor for the remainder of the rate year, which rate shall be based on the combined experience of all predecessor employers. In the event that any successor was, prior to an acquisition, an employer, and there is a difference in the contribution rate established for such calendar year applicable to any acquired or acquiring employer, the division shall make a recalculation of the contribution rate applicable to any successor employer based upon the combined experience of all predecessor and successor employers as of the date of the acquisition, unless the date of the acquisition is other than the first day of the calendar quarter. If the date of any such acquisition is other than the first day of the calendar quarter, the division shall make the recalculation of the rate on the first day of the next calendar quarter after the acquisition. When the date of the acquisition is other than the first day of a calendar quarter, the successor employer shall use its rate for the calendar quarter in which the acquisition was made. The revised contribution rate shall apply to employment after the rate recalculation. For this purpose a calculation date different from July first may be established. When the division has determined that a successor or successors stand in the position of a predecessor employer, the predecessor's liability shall be terminated as of the date of the acquisition.

2. If an employer transfers its trade or business, or a portion thereof, to another employer and at the time of the transfer there is substantially common ownership, management, or control of the two employers, the unemployment experience attributable to the transferred trade or business shall be transferred to the employer to whom such business is so transferred. The rates and liabilities of both employers shall be recalculated and made effective under this section.

3. Whenever any individual, type of organization, or employing unit is not an employer under this chapter at the time it acquires the trade or business of an employer, the unemployment experience of the acquired business shall not be transferred to such individual, organization, or employing unit if the division finds that such individual, organization, or employing unit acquired the business solely or primarily for the purpose of obtaining a lower rate of contributions. Instead, such individual, organization, or employing unit shall be assigned the applicable new employer rate under section 288.090. In determining whether the business was acquired solely or primarily for the purpose of obtaining a lower rate of contributions, the division shall use objective factors which may include the cost of acquiring the business, whether the individual, organization, or employing unit continued the business enterprise of the acquired business, how long such business enterprise was continued, or whether a substantial number of new employees were hired for performance of duties unrelated to the business activity conducted prior to acquisition.

4. (1) If an individual, organization, or employing unit knowingly violates or attempts to violate this section or any other provision of this chapter related to determining the assignment of a contribution rate, or if an individual, organization, or employing unit knowingly advises another individual, organization, or employing unit in a manner that results in a violation of such provision, the individual, organization, or employing unit shall be subject to the following penalties:

(a) If the individual, organization, or employing unit is an employer under this chapter, for the current year and the three rate years immediately following this rate year, such employer's base rate shall be the maximum base rate applicable to such type of employer, or the employer's current base rate plus two percent, whichever is greater. In addition, a civil monetary penalty of not more than five thousand dollars may be imposed;

(b) If the individual, organization, or employing unit is not an employer under this chapter, such individual, organization, or employing unit shall be subject to a civil monetary penalty of not more than five thousand dollars. Any such fine shall be deposited in the special employment security fund established under section 288.310.

(2) In addition to the penalty imposed by this subsection, any violation of this section may be prosecuted under section 288.395.

5. For purposes of this section, the following terms mean:

(1) "Base rate", the employer's contribution rate as determined by section 288.090, subsection 1, 2, or 3 of section 288.120, or section 288.126, or a federal base rate assignment;

(2) "Knowingly", having actual knowledge of or acting with deliberate ignorance or reckless disregard for the prohibition involved;

(3) "Violates or attempts to violate", includes, but is not limited to, intent to invade, misrepresentation, or willful nondisclosure.

6. The division shall establish procedures to identify the transfer or acquisition of a business for purposes of this section.

7. This section shall be interpreted and applied in such a manner as to meet the minimum requirements contained in any guidance or regulations issued by the United States Department of Labor.

Section B. Section A of this act shall become effective January 1, 2006.

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